IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b))
Description of case

Writ Petition No. 739 of 2002 (M/S)

Date of decision: 25th October, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment?

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IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 739 of 2002 (M/S)

State of Uttaranchal,
Through Secretary to Government,
Irrigation Department, Uttaranchal Shasan,
Dehradun & another. …… Petitioners

Versus

Shri Brij Behari Lal Mittal,
S/o Shri Pyare Lal Agarwal,
Presently posted as Superintending Engineer,
Investigation & Planning Circle,
Pithoragarh & others. …… Respondents

Mr. K.P. Upadhyaya, learned Brief Holder on behalf of State.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. K.P. Upadhyaya, learned Brief Holder on behalf of the petitioners.

2. This writ petition is against an order passed by the Public Service Tribunal dated 12.08.1998. It seems from this that respondent No. 1, who was facing the departmental inquiry right from the year 1996, approached the Tribunal and in that matter an order came to be passed on 12.08.1998 observing that the Government (the then State of U.P.) should have filed its reply, at least, by 12.08.1998 in pursuance of the orders passed by the Tribunal on 24.07.1998. It was found that inspite of that no reply was filed by the U.P. Government. Therefore, the Tribunal took the view and passed a simple order that the departmental inquiry should be completed within 6 months and if it is not completed in that period, then the case of respondent No. 1 for promotion as Superintending Engineer should be considered within 2 months thereafter.

3. AS usual, either advertently or inadvertently, the U.P. Government slept over this matter and nothing was done. All that was

done was that a review application was filed. That review application was dismissed on 11.05.1999 on the ground that the officer, who filed the affidavit, was not even a party to the original dispute i.e. the original application pending before the Tribunal. Thereafter, it seems that another application came to be moved, which is wrongly typed as an application dated 5.07.1999. In our opinion, it should be normally 7.05.1999. Be that as it may, even that application came to be dismissed by the Court on 12.10.1999 because in that application the prayer, which was made, was the same i.e. recalling the order dated 12.08.1999 and giving an opportunity for hearing. The Tribunal simply passed an order that the said application was made after the final orders were passed in the original application No. 373 of 1998 and all that was asked in the said application was an opportunity to file a written statement, that too, after the original application was finally decided and that there was no scope in the rules to do so and therefore, the permission to file the written statement could not have been granted by recalling the order dated 12.08.1999.

4. It is also to be seen that the State Government did not, either deliberately or inadvertently, file any written statement to the original application inspite of several opportunities given to it. Under the circumstances, the Tribunal passed the orders dated 11.05.1999 and 12.10.1999. Thereafter, the matter remained pending and the writ petition came to be filed for the first time in the year 2002 and it is coming up before us today for admission.

5. We are constrained to say that the Government of U.P. as well as the Government of Uttaranchal have shown extreme laxity in the matter by, firstly, no filing the written statement before the Public Service Tribunal and thereafter, treating this matter in an extremely casual way. We must record our utter displeasure on account of this. It is obvious that all this delay is not an inadvertent delay. It has the smell of deliberate delay because it is reported that the concerned person has already been promoted as the Superintending Engineer and

is working as such, which promotion he would never have got had the inquiry continued.

6. Under the circumstances, we are constrained to dismiss this writ petition because all that the Tribunal has done is to issue a direction that if the inquiry is not completed within 6 months, then, it would be deemed as if no inquiry was pending and as such, the respondent No. 1 would be entitled to be considered for promotion. The Government has not only considered him, but has promoted him also. Be that as it may, nothing stops the Government from proceeding with the inquiry because the inquiry has not bee quashed by the Public Service Tribunal. The Government will, therefore, be free to proceed with the inquiry and that would be a correct reading of the Tribunal's order. Unfortunately, even that exercise has not been taken up by the Government.

7. With these observations, we dismiss the writ petition. All the applications in this writ petition are also closed.

(Irshad Hussain, J.)
25.10.2004

(V.S. Sirpurkar, C.J.)
25.10.2004

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